Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 1627 of 2001

(Old F.A.F.O. No. 302 of 1983)

1. Srimati Veena Agarwal, wife of late Shri S.C. Agarwal, daughter of Shri Ramesh Chandra Goel, resident of House No. 64, Opposite Veterinary Hospital, Suraj Kund Road, Meerut City.
2. Kumari Richa (minor aged about 3 years) through her mother Shrimati Veena Agarwal, wife of late Shri S.C.Agarwal, as natural guardian and next friend, resident of House No. 64, Opposite Veterinary Hospital, Suraj Kund Road, Meerut City.
3. Kumari Ruchi (minor aged about 3 years) through her mother Shrimati Veena Agarwal, wife of late Shri S.C.Agarwal, as natural guardian and next friend, resident of House No. 64, Opposite Veterinary Hospital, Suraj Kund Road, Meerut City.

.....Claimants-Appellants.

Versus

1. U.P. State Bridge Corporation Limited, 16, Madan Mohan Malviya Marg, Lucknow, through its Managing Director.
2. The Oriental Fire and General Insurance Company Limited, Rishikesh (Dehradun).
3. Shri Shiv Narain, Driver, son of Shri Lochan Singh, C/O The Office of the Senior Engineer, Bridge Construction, Unit No. 'I', U.P.State Bridge Corporation Limited, Hardwar, permanent resident of Village Dhoodhni, Police Station Jamania, District Ghazipur.

...Respondents.

Sri B.D. Upadhyay, Advocate, learned counsel for the appellants.
Sri T.A.Khan, Advocate, learned counsel for the respondent No.2.

Coram: Hon'ble M.M. Ghildiyal, J.
Hon'ble B.S. Verma, J.

Date October 28, 2006.
(Per Hon'ble B.S. Verma, J.)

This appeal has been preferred under Section 110-D of the of the Motor Vehicles Act, 1939 ***(for short the Old Act)*** against the judgment and order dated 31-01-1983 passed by the Motor Accident Claims Tribunal Tehri Garhwal ***(in short the Tribunal)*** in M.A.C. Petition No. 7 of 1981, Smt. Veena Agarwal and another Vs. U.P.State Bridge Corporation and others, whereby the learned Tribunal awarded compensation of Rs. 69,580/- along with interest @ 6% per annum in favour of the claimants payable by the

respondent no. 1 and 3 as mentioned in the impugned order. Aggrieved, the claimants have come up in appeal for enhancement of compensation amount.

Relevant facts necessary for a just decision of the present appeal are that Sri S.C.Agarwal, husband of claimant no.1 Veena Agarwal, who was aged 28 years and earning Rs. 1426/- per month as Assistant Engineer under the employment of U.P.State Bridge Corporation lost his life in a vehicular accident on 12-4-1981 involving Jeep No. UTD-4270. According to the claimant-appellants, on the fateful day, i.e. 12-4-1981, at about 5 p.m., the deceased along with some other persons was coming by the illfated Jeep from the place of work, called Zero Point to Tehri. When the Jeep reached between place Damaxis and Zero Point on the Bhagirathi river side, due to rash and negligent driving by its driver, the jeep met with the accident and fell down in Bhagirathi River with the result S.C.Agarwal suffered grievous injuries and died on spot. The claimant-appellants being dependents and legal heirs of the deceased claimed compensation of Rs. 5,00,000/- on different counts.

The claim petition was contested by the opposite party-appellant by filing its written statement on the ground that the deceased was working with the contractor Sri V.P.Goyal. It was asserted that the jeep in question was being driven by S.C. Agarwal, A.E. and not by the driver, Shiv Narain, hence the claim petition was not maintainable against the appellant. It was also pleaded that the jeep was insured with the O.P. No.2, which is liable to pay the compensation if any.

The insurer of the vehicle filed its written statement alleging therein that the jeep was not being driven by its driver and the person, who was driving the vehicle was not having a valid driving licence. It was stated that at the time of accident, the jeep

was overloaded with 10 passengers against the prescribed limit of 5 persons against the terms of the policy condition.

The O.P. No. 3 Shiv Narain took the similar stand as taken by the O.P.No.1-appellant.

On the pleadings of the parties, the learned Tribunal framed following issues in the case:-

1. Whether deceased SC Agrawal himself was driving the vehicle at the time of the accident as alleged? K If so, its effect?

2. Whether the accident took place due to the rash and negligent driving of the jeep No. UTD 4270 by the driver Shivnarain?

3. Whether the driver Shiv Narain had a valid driving license for hill roads?

4. Whether the insurance company is not liable to pay any compensation as alleged in para-4 of the written statement?

5. Whether the insurance company is not liable to pay any compensation as alleged in para-12 of the written statement?

6. Whether the petition is not maintainable against the UP Bridge Corporation as alleged lin para-8 of the written statement?

7. To what compensation, if any, are the claimants entitled?

After recording the evidence of the parties and perusing the same, the learned Tribunal came to the conclusion that the driver Shiv Narain was driving the ill-fated jeep at the relevant time and not S.C.Agarwal. It was further held that the driver of the jeep was rash and negligent in driving the jeep. It was further held that the driver Shiv Narain was having a valid driving licence at the time of accident. The Tribunal also came to the conclusion that since the jeep was being driven by driver Shiv Narain, therefore, the issue

does not arise whether S.C.Agrawal was having a valid driving licence. The Tribunal found that the passengers travelling the in the jeep were gratuitous passengers and consequently the Insurance Company was not liable to pay any compensation. It was found that the claim petition was maintainable against the O.P. No. 1-appellant. The Tribunal further held that S.C. Agrawal was a gratuitous passenger. Ultimately the claim petition was decreed vide judgment and award dated 31-1-1983 for compensation of Rs. 69,580/- along with interest @ 6% per annum against the respondent nos. 1 and 3, the owner and driver of the Jeep, alone. Aggrieved by the said award, the claimants have come up in appeal for enhancement of the compensation amount.

The impugned judgment and award has been assailed mainly on the grounds that the learned Tribunal has not properly computed the amount of compensation to be awarded to the claimants. According to the claimant-appellants, the learned Tribunal was not justified in deducting the ex-gratia payment of Rs. 30,000/- made to the claimants. The Tribunal has also erred in deducting the amount of Insurance Policy from the compensation amount. The finding of the Tribunal has also been hammered because the Tribunal has not taken into account the savings made by the deceased from his salary, though the amount of Rs. 19,475/- towards annual savings was deducted from the compensation amount. It has also been contended that the Tribunal was not justified in making 1/3rd deductions twice- one towards personal expenses and the other towards lump sum payment of the compensation.

At the outset it may be mentioned that in the case at hand, the learned Tribunal has decided three claim petitions no. 7 of 1981, Smt. Veena Agrawal and another Vs. U.P.State Bridsge Corporation and others, M.A.C. Petition NO. 8 of 1981, Smt. Chameli Devi and others Vs. U.P. State Bridge Corporation and

others and M.A.C. Petition No. 9 of 1981, Vimla Devi and others Vs. U.P. State Bridge Corporation and others by a common judgment and award. It is pertinent to note that the U.P. State Bridge Corporation Ltd. filed separate appeals against the judgment and award passed in Claim Petition No. 7 of 1981, which was numbered as A.O. No. 904 of 2001, U.P. State Bridge Corporation Ltd. Vs. Smt. Vimla Devi and others. A.O. No. 905 of 2001 was filed against the award passed in Claim Petition No. 9 of 1981, Smt. Vimla Devi and others V. U.P.State Bridge Corporation Ltd. and others. The A.O. No. 905 of 2001 was decided by this Court vide order dated 19-4-2006 and the same was dismissed on merit. Subsequently, when the A.O. No. 904 of 2001, U.P.State Bridge Corporation Ltd. Vs. Smt. Veena Agrawal came up for hearing before this Court, the said appeal preferred by the U.P. State Bridge Corporation Ltd. was decided on 12-5-2006 and dismissed in terms of the judgment of this Court passed in A.O. NO. 905 of 2001. We have perused the order of this Court passed in both the aforesaid appeals. It is clear that this Court has already considered all the contentions raised by the owner of the vehicle in appeal. Therefore, in view of this fact, in the present appeal the matter requires scrutiny only on the point of quantum of compensation. The only question for determination in the present appeal whether the compensation awarded by the learned Tribunal to the claimant-appellants is adequate or not?

It is not disputed that deceased S.C.Agrawal was posted as Assistant Engineer under the employment of U.P. State Bridge Corporation Ltd. and he was aged about 28-29 years at the time of his death.

Ext.4 is the statement of salary drawn by the deceased in March 1981. There is no dispute about the correctness of this statement. The gross salary of the deceased was Rs. 1426.10 and E.P.F. deduction was Rs. 96.25 and net salary payable to the deceased was Rs. 1329.85. The Tribunal after having considered the

income tax statement of the deceased. The Tribunal found that the total income of the deceased was Rs. 18,658.21 Since as per this statement, saving of Rs. 5028.70 was shown, the learned Tribunal deducted the amount of savings from this amount and after having made all deductions came to the conclusion that the deceased S.C. Agrawal was left with income of Rs. 13,629.51. The learned Tribunal after thrashing out all the amounts to the credit of the deceased, ultimately came to the conclusion that the deceased was spending a sum of Rs. 5,840/- on his family. As per statement of salary, the deceased was getting Rs. 18.658.21 per annum and out of this amount the deceased was found to have spent only Rs. 5,840/- on his family. This finding was arrived at by the learned Tribunal on the basis of the discussions made by the Tribunal at pages 25 to 28 of the impugned judgment and the amount has been worked out after deducting 1/3rd amount towards personal expenses and after deducting the savings made by the Tribunal. Having gone through the all the aspects of the case, we hold that the loss of dependency comes to Rs. 5,840/- per annum. The deceased S.C.Agrawal was aged about 28-29 years at the time of his death. Now, it has to be seen as to what will be the just, fair and reasonable compensation for the death of deceased S.C.Agrawal.

In the instant case, the motor accident took place on 12-4-1981, when the provisions of the Old Act of 1939 were applicable. The Apex Court in the case of ***General Manager, Kerala State Road Transport Corporation V. Susamma Thomas (Mrs) and others [(1994) 2 Supreme Court Cases, 176]*** has held ***that "Motor Vehicles Act, 193- Ss. 110-A and 110-B- Motor accident- Compensation- Determination of- It must be just, fair and reasonable-Multiplier method of computation, held, is the proper, logically sound and well-established method for determining first compensation- Departure from, justified only in rare and extraordinary circumstances and very exceptional cases- Multiplier method explained and applied to determine quantum of compensation in***

case where deceased aged 38 years employed in a newspaper establishment on a monthly salary of Rs.1032 died in a motor accident in Feb. 1984 leaving behind his parents, widow and children as claimants- Multiplier of 12 and multiplicand of Rs. 17,000 per annum adopted-Interest awarded-Tribunal should also consider the safety measures to be taken to protect the interest of minors and other illiterate or semi-literate claimants."

In the instant case, the learned Tribunal had taken the expectancy of life up-to 60 years and had computed the multiplier of 32 years, thereby the total amount was arrived at Rs. 1,86,880/-. In the ***Susamma Thomas case (supra)*** it has been observed in paragraph no. 19 by the Apex Court that ***"it will not be inappropriate to take a reasonably liberal view of the prospects of the future and in estimating the gross income it will be unreasonable to estimate the loss of dependency on the present actual income of Rs. 1032 per month. We think, having regard to the prospects of advancement in the future career, respecting which there is evidence on record, we will not be in error in making a higher estimate of monthly income at Rs. 2000 as the gross income. From this has to be deducted his personal living expenses, the quantum of which again depends on various factors such as whether the style of living was Spartan or bohemian. In the absence of evidence it is not unusual to deduct one-third of the gross income towards the personal living expenses and treat the balance as the amount likely to have been spent on the members of the family and dependents. This loss of dependency should capitalize with the appropriate multiplier."*** In that case, the Apex Court took the loss of dependency at the rate of Rs. 1400/- per month or Rs. 17,000/- per year and the multiplier of 12 was applied considering the age of the deceased, who was 39 years of age. In the instant case, the deceased was aged 28 years, therefore, the multiplier of 18 will be proper to work out the just and fair compensation. Thus the loss of dependency comes 5840/- x 18 =

1,05,120/-. In the instant case, no amount towards funeral expenses, loss of consortium and loss of love and affection has been awarded. In our opinion, a lump sum amount of Rs. 25,000/- on these counts will serve the ends of justice. Accordingly, the claimant-appellants are entitled to compensation of 1,30,120/-, which can be rounded off to Rs. 1,30,000/-.

It is admitted to the P.W.1 Veena Agrawal that the Bridge Corporation has paid sum of Rs. 30,000/- as immediate relief on account of accidental death of the deceased, therefore, in the facts and circumstances of the case, deduction of this amount from the compensation amount is justified. The claimant-appellants shall be entitled to get compensation of Rs. 1,30,000/- (-) 30,000/- = 1,00,000/-. The learned Tribunal has imposed further deduction of Rs. 25,000/- on the ground that the deceased was having LIC Policy. In our opinion, the Tribunal was not justified in making deduction of this amount of LIC Policy, which was in fact not paid till the date of impugned award. Accordingly, we hold that the claimant-appellants are entitled to compensation of ***Rs. 1,00,000/- instead of Rs. 69,580/-*** payable by the respondent nos. 1 and 3, as held by the learned Tribunal.

So far as the award of interest @ 6% per annum is concerned, the finding of the Tribunal does not require any interference. The finding of the Tribunal awarding interest @ 6% per annum on the compensation amount is upheld. The impugned award is liable to be modified to the above extent.

In view of the discussion aforesaid, the appeal preferred by the claimants is liable to be party allowed and the impugned award is liable to be modified accordingly.

The appeal is partly allowed. The claimant-appellants are entitled to compensation of ***Rs. 1,00,000/- (one lac)*** instead of

Rs. 69,580/- payable by the respondent nos. 1 and 3, as held by the learned Tribunal. The claimant-appellants shall also be entitled to simple interest @ six per cent per annum on the compensation amount from the date of filing of claim petition, i.e. 16-9-1981, till the date of payment. The impugned award dated 31-1-1983 stands modified. No order as to costs.

(B.S. Verma, J) **(M.M.Ghildiyal, J)**

RCP